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*T.D.*

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/309,128    05/10/99    FRANKENBACH

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IM52/0302

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| EXAMINER |
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| HARDEE, J<br>ART UNIT | PAPER NUMBER |
|-----------------------|--------------|

1751  
DATE MAILED:

03/02/01

*9*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/309,128

Applicant(s)

Frankenbach et al.

Examiner

John R. Hardee

Group Art Unit

1751



☒ Responsive to communication(s) filed on Feb 22, 2001

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-30 is/are pending in the application.

Of the above, claim(s) 6, 8-14, and 19-25 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-5, 7, 15-18, and 26-29 is/are rejected.

☒ Claim(s) 30 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1751

## **DETAILED ACTION**

### ***Election/Restriction***

1. The restriction and species election made in the first office action, Paper No. 4, remain in effect. These requirements were made FINAL in the previous office action, Paper No. 6. Claims 6, 8-14 and 19-25 remain withdrawn from consideration as being drawn to non-elected subject matter. The remaining claims were searched and examined only to the extent that they read on the elected invention.

### ***Continued Prosecution Application***

2. The request filed on February 22, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/309,128 is acceptable and a CPA has been established. An action on the CPA follows.

3. The examiner believes that the CPA was filed to overcome the 103 rejection of record. Applicant has not met the additional requirements of stating on the record that the present application and the 103 reference were commonly assigned at the time of filing. Accordingly, the 103 rejection is maintained. See 1241 O.G. 96.

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***Claim Rejections - 35 USC § 103***

4. Claims 1-5, 7, 15-18 and 26-29 remain rejected under 35 U.S.C. 103(a) as being unpatentable for the reasons of record in the previous office action.

***Allowable Subject Matter***

5. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Reasons for allowance are of record in the first office action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 7:30 until 4:00. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



John R. Hardee  
Primary Examiner  
March 1, 2001